

"And all that portion of the east half of the Southeast Quarter of the Northwest Quarter of said Section 1 (with reference to Section 1, town 6 south, range 2 east) that lies south of the center of the Celina and New Corydon free turn pike."

There is difficulty in following the descriptions in the later conveyances as set forth in Sections 17, 18, 19 and 20 with reference to the original tract set off to Mira Gertrude Baily. This difficulty is magnified by the fact that the descriptions refer to the Celina and New Corydon Road or Mud Pike as a boundary line, and no plat is attached showing the locations of said road with reference to the situations of the quarter sections. Neither does the plat show what part of the East Half (E. $\frac{1}{2}$) of the Northwest Quarter (N. W. $\frac{1}{4}$) of Section One (1), Township Six (6), Range Two (2) East, is included in the lands dedicated by N. B. Hawkins, although there is a plat of the lands so dedicated showing numbers of lots, streets and alleys, etc. However, without additional plats it is impossible in tracing the description to decide whether the lots under investigation are in the premises coming from the said Mira Gertrude Baily. It may be that the additional plats will clear up some of the apparent confusion in the description of the deeds mentioned.

In view of the foregoing, the status of the title to the lands under consideration will be disapproved until such time as the defects heretofore pointed out have been corrected, at which time the same may be resubmitted and further consideration will be given.

It may further be suggested that the deed should grant the premises, in the event the title can be approved, to the State of Ohio, its "successors and assigns" rather than to The State of Ohio, Division of Highways, its "heirs and assigns", as now is provided in said form.

It may further be pointed out that before a deed may be accepted and the warrant delivered in payment therefor, the certificate of the Director to the effect that there are unencumbered balances legally appropriated available to cover the purchase price of the premises under consideration should be obtained.

The said abstract, deed form and tax receipt are being returned herewith.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2701.

SHERIFF—DUTY AS TO FURNISHING MEDICAL AND SURGICAL SERVICES TO PRISONERS CONFINED IN COUNTY JAIL—AUTHORITY OF COUNTY COMMISSIONERS.

SYLLABUS:

It is the duty of the sheriff to furnish and the county commissioners to provide at the expense of the county such medical, surgical or other like services as may be necessary to the health of prisoners lawfully confined in the county jail, even though the injury requiring such services occurred prior to such confinement.

COLUMBUS, OHIO, October 11, 1928.

HON. HARRY K. FORSYTH, *Prosecuting Attorney, Sidney, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, as follows:

"One George F., a resident of Salem Township, this county, was arrested by the Sheriff of said county for driving an automobile while intoxicated. The arrest followed an accident involving the machine which he was driving, in which he sustained a serious injury to his collar bone. Subsequently an affidavit was filed against him in the Mayor's Court, charging him with operating an automobile while in a state of intoxication, said affidavit being based upon a violation of Section 12628-1 of the General Code. To this affidavit he entered a plea of guilty and was thereupon fined \$100.00 and costs of prosecution. While confined in jail he required the services of a physician, who was called by the sheriff. Said George F. is indigent and unable to pay said bill and same has been duly presented to the commissioners of said county for allowance. The auditor refuses to pay because of the fact that the injury requiring medical services was sustained prior to confinement.

Under the foregoing facts, should the commissioners of Shelby County allow this bill?"

From your letter it appears that the medical attention for which the bill in question was rendered to your board of county commissioners was rendered during the time when the prisoner was lawfully imprisoned for the violation of a state law either during a reasonable time prior to his arraignment or during the time of his imprisonment imposed by the court, pursuant to his plea of guilty. I note that the objection made by the county auditor to the payment of the bill is "that the injury requiring medical services was sustained prior to confinement."

The same question was presented and considered in Opinion No. 2246 rendered under date of June 18, 1928 to the Bureau of Inspection and Supervision of Public Offices, in a case in which a prisoner was shot during an attempted escape while the police officer was in the act of delivering him to the sheriff. The pertinent parts of the syllabus of that opinion are as follows:

"1. * * * * *

2. It is the duty of the sheriff to furnish, and the county commissioners to provide at the expense of the county, such medical, surgical and other like services as may be necessary to the health of prisoners lawfully confined in the county jail.

3. If the Common Pleas Court has, by virtue of Section 3162, prescribed rules governing the employment of medical or surgical aid when necessary for prisoners in the county jail, such rules must be adhered to in furnishing such services."

You will note that in that case the injury in question was also inflicted prior to the delivery of the prisoner to the sheriff. The reasons for the conclusion in that opinion are set forth at length therein, but the following parts are especially pertinent to your question:

"The answer to your question depends upon whether or not the prisoner was, as a matter of law, a prisoner in the county jail at the time the medical and hospital services referred to were rendered. If he were lawfully a prisoner in the county jail, it is the duty of the county commissioners of Miami County to pay the bills in question, while the contrary is true if he were not such a prisoner."

Also on page 7 of that opinion is the following:

“Regardless of whether or not the delivery had been effected before the shooting of the prisoner, it would seem from the facts before me that the delivery was completed after the prisoner was wounded. From your statement, the police officer was ‘in the act of turning him over to the sheriff,’ when the prisoner broke away and ran. While your letter does not specifically so state, I assume from the fact that the regularly employed jail physician was called, the sheriff was present and in charge. If the sheriff were present, the act of delivering the prisoner to him having been interrupted by the prisoner’s attempted escape, I think it would necessarily follow that after the prisoner was wounded, the sheriff either expressly or by his actions and acquiescence, directed how and where the necessary medical and surgical services should be rendered. This conclusion is supported by the fact that the regularly appointed jail physician was called and examined the prisoner and determined what medical treatment was necessary to restore him to health.”

General Code Section 2850, defining the powers of the sheriff with respect to the custody of prisoners, provides in part as follows:

“* * * * The sheriff shall furnish at the expense of the county, to all prisoners confined in jail, except those confined for debt only, fuel, soap, disinfectants, bed, clothing, washing and nursing when required, and other necessaries as the court in its rules shall designate.”

General Code, Section 3177, defining the duties of the county commissioners with respect to providing for the custody and care of prisoners, also provides in part as follows:

“* * * They may appoint a physician for the jail, at such salary as is reasonable, to be paid from the county treasury. Such physician, or any physician or surgeon employed in the jail, shall make a report in writing whenever required by the commissioners, the grand jury or the court. The sheriff shall make a report to the commissioners annually, or oftener if they so require, of the property of the county in the jail, and the condition thereof.”

As stated on page 9 of my former opinion, *supra*, “while no section of the General Code expressly authorizes the sheriff to furnish medical or surgical services to a prisoner when necessary, it is my opinion that under the provisions of the sections above quoted in part, the sheriff is authorized and required to furnish, at the expense of the county, such medical or surgical aid as may be necessary for any prisoner lawfully confined in jail, except where such prisoner is confined for debt.” I find nothing in the law, or in reason, that confines the obligation of the sheriff to furnish such care to cases in which the prisoner is injured after his confinement has commenced. In fact, the arguments of reason are to the contrary, as it is readily apparent that in a large proportion of cases the person taken into custody is injured during the violation of law which warrants his arrest or in his attempted resistance of the arrest.

Answering your question specifically, it is my opinion, therefore, that the county commissioners should allow the bill for medical services administered to the prisoner confined in the county jail upon the request of the sheriff, unless some rule prescribed by the Common Pleas Court of your county provides some other method for the securing of medical services than that followed by the sheriff in the case which you present.

Respectfully,

EDWARD C. TURNER,
Attorney General.